

HON. DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT,)	
)	No. 3:23-cv-05084-DGE
Plaintiff,)	
v.)	CONSENT DECREE
)	
FIRST STUDENT, INC.,)	
)	
Defendant.)	
_____)	

I. STIPULATIONS

WHEREAS, Plaintiff Waste Action Project filed a complaint on February 1, 2023 (Dkt. 1) and a first amended complaint on July 21, 2023 (Dkt. 18) against defendants First Student, Inc. (“First Student”) and Strata Environmental Services, Inc (“Strata”) alleging violations of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, relating to discharges of stormwater and other pollutants from First Student’s school bus transportation facility at or about 1128 St. Paul Avenue, Tacoma, WA 98421 (the “Facility”), and any contiguous or adjacent properties owned or operated by First Student, to the Thea Foss Waterway, and seeking declaratory and injunctive relief, civil penalties,

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and attorneys' fees and costs.

WEREAS, Waste Action Project and First Student and Strata stipulated to dismissal with prejudice of Strata on August 16, 2023 (Dkt. 31).

WHEREAS, Waste Action Project and First Student (the "Parties") agree that settlement of these matters is in the best interest of the Parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

WHEREAS, the Parties stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Waste Action Project's claims or allegations set forth in its complaint and its sixty-day notice.

DATED this ____ day of July, 2024

FIRST STUDENT INC.

WASTE ACTION PROJECT

By _____
Michael Petrucci
Senior VP & General Counsel

By _____
Greg Wingard
Executive Director

II. ORDER AND DECREE

THIS MATTER came before the Court upon the Parties' Joint Motion for Entry of Consent Decree and the foregoing Stipulations of the Parties. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and subject matter of this action.

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2. Each signatory for the Parties certifies for that party that he or she is authorized to enter into the agreement set forth herein and to legally bind the party or parties, their successors in interest, and assigns of the Parties.

3. This Consent Decree applies to and binds the Parties and their successors and assigns.

4. This Consent Decree and any injunctive relief ordered within applies to the operation, oversight, or both by First Student of the Facility.

5. This Consent Decree is a full and complete settlement and release of all the claims in the complaint and the sixty-day notice and all other claims known or unknown existing as of the date of entry of the Consent Decree that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from operation of the Facility. Upon termination of this Consent Decree, these claims are released and dismissed with prejudice. First Student's payment of attorney's fees and litigation costs set forth in paragraph 9 of the Consent Decree will be in full and complete satisfaction of any claims Waste Action Project and Smith & Lowney, PLLC have or may have, either legal or equitable, known or unknown, and of any kind or nature whatsoever, for fees, expenses, and costs incurred in the Litigation. Enforcement of this Consent Decree is Waste Action Project's exclusive remedy for any violation of its terms.

6. This Consent Decree is a settlement of disputed facts and law. It is not an admission or adjudication regarding any allegations by Waste Action Project in this case or of any fact or conclusion of law related to those allegations, nor evidence of any wrongdoing or misconduct on

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2 the part of First Student or its contractors, customers, or other third parties. First Student agrees to
3 the terms and conditions identified below in paragraphs 7-9 in full and complete satisfaction of all
4 the claims covered by this Consent Decree:

5 7. Upon entry of the Consent Decree, First Student will implement the following
6 injunctive relief:

- 7 a. First Student will adhere to the requirements of the Clean Water Act at the
8 Facility and the terms and conditions of the Industrial Stormwater General
9 Permit ("ISGP") and any successor or modified versions of the NPDES
10 permits.
- 11 b. First Student will, on a quarterly basis, electronically forward to Waste
12 Action Project copies of all communications or documents provided to
13 and/or received from Ecology related to the Facility's compliance with the
14 ISGP, along with written progress reports that explain First Student's efforts
15 to comply with the Consent Decree, on a quarterly basis for the life of the
16 Consent Decree.
- 17 c. If First Student exceeds the ISGP's zinc benchmark in any quarter at Facility
18 Outfall 1, it will immediately conduct a comprehensive study, with
19 assistance of a qualified consultant, of zinc pollutant sources onsite and
20 remedy the pollutant sources before the next sampling event. If this
21 condition is triggered, then First Student also agrees to add any identified
22 pollutant sources to its Stormwater Pollution Prevention Plan (SWPPP). If
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multiple samples are collected at the same discharge location in the same calendar quarter, First Student may average the sample results and compare the average to the permit benchmark to determine whether the benchmark was exceeded.

- d. First Student will, within 30 days of entry of the Consent Decree, identify rooftop air vent(s) and/or smokestack emission sources, and other rooftop stormwater contamination sources in the facility's SWPPP. First Student will also add and implement source control best management practices ("BMPs") within 30 days of entry of the Consent Decree to mitigate contamination from those sources such as air pollution control equipment (e.g., a scrubber) and/or cease burning waste oil onsite.
- e. First Student will inspect the Facility entrance driveway and adjacent public roadway on a daily basis and conduct weekly cleanup of any tracked-out sediment by a vacuum or regenerative air sweeper on the paved areas of the site and on the public road. If, during a daily inspection, a significant accumulation of track out is observed, First Student agrees to initiate cleanup within 24 hours.
- f. First Student will, within 14 days of entry of the Consent Decree, replace the catch basin insert at Catch Basin #1 (which drains to Outfall 002) with an insert containing appropriate treatment media, such as biochar or equivalent, which is designed to remove solids, copper, and zinc. First Student will

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2 maintain and replace the new catch basin insert as recommended by the
3 manufacturer and agrees to include those specifications and schedules in its
4 SWPPP.

5 g. First Student will monitor its stormwater discharges at Outfall 1 twice per
6 quarter until 8 samples have been collected. If, over the course of those 8
7 samples, (a) First Student's results in two consecutive samples exceed the
8 ISGP benchmark for turbidity or results in two consecutive samples exceed
9 the ISGP benchmark for TSS, or (b) if First Student's results in any six
10 samples exceed the ISGP benchmark for any applicable pollutant parameter,
11 then First Student will install an advanced stormwater treatment system.
12 First Student may average the results of samples obtained in the same
13 calendar quarter and compare the average value to the benchmark value to
14 determine whether an exceedance occurred. If this requirement is triggered,
15 First Student will fully implement the advanced stormwater treatment
16 system and begin its operation within 1 year of the triggering exceedance.
17 The advanced stormwater treatment system will employ AKART and be
18 proven to be capable of meeting benchmarks consistently.

19 h. If First Student triggers the requirement to install an advanced treatment
20 system (described para 7(g), above), First Student will prepare an
21 Engineering Report for the selected treatment system within 120 days of the
22 triggering exceedance and provide a copy to Waste Action within 7 days of
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2 its preparation. Waste Action Project may provide written comments on the
3 Engineering Report within 30 days of receipt of the Engineering Report.
4 First Student will consider any input or recommendations provided by Waste
5 Action Project in good faith and respond in writing within 30 days with a
6 detailed explanation of how it will address Waste Action Project's input.

- 7 i. First Student will add a sampling location at catch basin SD01, which flows
8 to Outfall 002, to its sampling plan. First Student agrees to begin monitoring
9 at this location during the first full quarter following entry of the consent
10 decree. First Student agrees to file the required ISGP Sample Point Update
11 Form with Ecology and send a copy to WAP. First Student may cease
12 monitoring at this location if monitoring data shows there are 3 consecutive
13 samples without any benchmark exceedances, so long as it has included the
14 First Fall Storm Event, as defined by Appendix 2 to the ISGP, as one of the
15 samples. If the Consent Decree is entered after the 2024 First Fall Storm
16 Event (also referred to as the "first flush") and First Student did not sample
17 the first flush discharge at this location, First Student must sample the 2025
18 first flush event, and if that sample shows any benchmark exceedances, First
19 Student may not suspend sampling at this location. First Student agrees to
20 amend its SWPPP to reflect the changes in its Sampling Plan by that date
21 and send a copy of the revised SWPPP to WAP within 7 days of amending.

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j. First Student will, within 30 days of entry of the Consent Decree, make the following revisions to its SWPPP if not already completed (and to provide WAP with a copy of the revised SWPP within 7 days):

- i. Identify the area subleased to the trucking company on the site map and in the facility description narrative, including a description of the activities performed by the trucking company. To the extent any areas of the facility used by the sublessee are not already incorporated into the ISGP-regulated footprint, First Student must also add those areas to the SWPPP.
- ii. On the site map, include the scale or relative distances between significant structures and drainage systems.
- iii. On the site map, indicate which storm lines flow to the Thea Foss Waterway, and use an arrow and label to indicate the relative location of the waterway in reference to the facility.
- iv. On the site map, accurately delineate the drainage basin for outfall SD01, following a qualified professional's reassessment of this basin.
- v. On the site map, indicate with arrows the flow of truck and bus traffic through the facility.
- vi. Add detailed descriptions of roof emission locations, and applicable BMPs.

vii. Remove the reference to on-site vehicle washing and instead explain and describe how vehicle washing is now conducted off-site.

viii. In the Material/ Waste Inventory Stored Outdoors section, provide more detail as to what is included in “solid waste.”

ix. Include all signed, dated SWPPP Certification Forms as required by ISGP Conditions G2, S3.A.4, S7, and S8; and if no signed SWPPP Certification Forms yet exist, First Student will include these for each and every subsequent SWPPP revision.

x. For each entry of the SWPPP Amendment Log, describe the revisions that were made.

k. First Student will ensure that each and every member of its Stormwater Pollution Prevention Team is trained in accordance with ISGP Condition S3.B.4.b.i.5, at least annually.

l. First Student will begin using an ISGP compliant monthly inspection form immediately.

8. Payment in Lieu of Penalty: Within thirty (30) days of entry of this Consent Decree, First Student will pay \$302,000 (THREE HUNDRED AND TWO THOUSAND DOLLARS) to EarthCorps for projects to benefit water quality in Commencement Bay and Puget Sound, as described in **Exhibit 1** to this Consent Decree. The check will be made to the order of EarthCorps, and delivered to Evlyn Andrade, 6310 NE 7th Street, Suite 201E, Seattle, WA 98115. Payment will include the following reference in a cover letter or on the check:

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2 “Consent Decree, Waste Action Project v. First Student, Inc. W.D. Wash. No. 3:23- cv-05084-
3 DGE.” First Student will send a copy of the check and cover letter, if any, to Waste Action
4 Project and its counsel, pursuant to the notice provisions in paragraph 18.

5 9. Within ten (10) days of entry of this Consent Decree by the Court, First Student
6 will pay \$138,000 (ONE HUNDRED AND THIRTY-EIGHT THOUSAND DOLLARS) to
7 Waste Action Project to cover Waste Action Project’s litigation fees, expenses, and costs
8 (including reasonable attorneys and expert witness fees) by check payable and mailed to Smith
9 & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Marc Zemel.

10 10. A force majeure event is any event outside the reasonable control of First
11 Student that causes a delay in performing tasks required by this Consent Decree that cannot be
12 cured by due diligence. Delay in performance of a task required by this Consent Decree caused
13 by a force majeure event is not a failure to comply with the terms of this Consent Decree,
14 provided that First Student timely notifies Waste Action Project of the event, the steps that First
15 Student will take to perform the task, the projected time that will be needed to complete the
16 task, and the measures that have been taken or will be taken to prevent or minimize any impacts
17 to stormwater quality resulting from delay in completing the task.

18 11. First Student will notify Waste Action Project of the occurrence of a force majeure
19 event as soon as reasonably possible but, in any case, no later than fifteen (15) days after First
20 Student becomes aware of the event. In such event, the time for performance of the task will be
21 extended for a reasonable period of time following the force majeure event.

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By way of example and not limitation, force majeure events include

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods;
- c. Actions or inactions of third parties over which First Student has no or limited control;
- e. Restraint by court order or order of public authority; and
- f. Strikes.

12. This Court retains jurisdiction over this matter, while this Consent Decree remains in force. While this Consent Decree remains in force, this case may be reopened without filing fees so that the Parties may apply to the Court for any further order that may be necessary to enforce compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a dispute regarding implementation of, or compliance with, this Consent Decree, the Parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting will be held as soon as practical but must be held within thirty (30) days after notice of a request for such a meeting to the other Party and its counsel of record. If no resolution is reached at that meeting or within thirty (30) days of the Notice, either Party may file a motion with this Court to resolve the dispute. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, will apply to any additional court proceedings necessary to enforce the terms and conditions of this Consent Decree.

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2 13. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
3 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five
4 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
5 General and the Administrator of the U.S. Environmental Protection Agency (“EPA”). Therefore,
6 upon the filing of this Consent Decree by the parties, Waste Action Project will serve copies of it
7 upon the Administrator of the U.S. EPA and the U.S. Attorney General.

8 14. This Consent Decree will take effect upon entry by this Court. The Consent Decree
9 terminates two (2) years after that date or upon completion of all requirements (whichever is later).

10 15. Both Parties have participated in drafting this Consent Decree.

11 16. This Consent Decree constitutes the entire agreement between the Parties. There are
12 no other or further agreements, either written or verbal. This Consent Decree may be modified only
13 upon a writing signed by both Parties and the approval of the Court.

14 17. If for any reason the Court should decline to approve this Consent Decree in the
15 form presented, this Consent Decree is voidable at the discretion of either Party. The Parties agree
16 to continue negotiations in good faith to cure any objection raised by the Court to entry of this
17 Consent Decree.

18 18. Notifications required by this Consent Decree must be in writing and via email. For
19 a notice or other communication regarding this Consent Decree to be valid, it must be sent to the
20 receiving Party at the one or more email addresses listed below or to any other address designated
21 by the receiving Party in a notice in accordance with this paragraph.

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If to Waste Action Project:

Greg Wingard
Waste Action Project
gregWAP@earthlink.net

And to:

Marc Zemel
Katelyn Kinn
Smith & Lowney PLLC
marc@smithandlowney.com
katelyn@smithandlowney.com

If to First Student:

Susan Kirkpatrick, Susan.Kirkpatrick@firststudentinc.com
John Williams, John.Williams@firststudentinc.com

And to:

Mark Myers, mmyers@williamskastner.com
James Bulhuis, JBulhuis@WilliamsKastner.com
Williams Kastner & Gibbs PLLC

Any party identified in the notice provisions above may affect a change in the notice address by providing a notice complying with these provisions to all other parties listed. A notice or other communication regarding this Consent Decree will be effective the day it is transmitted. An email is effective the day it is sent so long as it is sent by 5 pm and on a business day, or else it is effective the following business day.

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2 DATED this 23rd day of September 2024.

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6 HON. DAVID G. ESTUDILLO
7 UNITED STATES DISTRICT JUDGE

8 Presented by:

9 SMITH & LOWNEY, PLLC

10 By: /s/ Marc Zemel
11 Marc Zemel, WSBA #44325
12 Katelyn Kinn, WSBA #42686
13 *Attorneys for Plaintiff Waste Action Project*
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